

MEMORIAL

OF

THOMAS W. CHINN AND OTHERS,

PRAYING

To be released from a judgment against them as sureties of Thomas G. Morgan, late collector at New Orleans.

APRIL 17, 1848.

Referred to the Committee of Claims, and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The memorial and petition of Thomas W. Chinn and Micajah Courtney, on behalf of themselves and Josiah Barker, and the heirs and legal representatives of John Davenport, deceased, all of the State of Louisiana, most respectfully shows :

That some time in the year 1841, Thomas Gibbes Morgan, of the said State of Louisiana, was appointed, by the President of the United States, collector of the revenue for the port of New Orleans ; and that, in pursuance of said appointment, the said Morgan did enter upon the duties of the said office on or about the 12th day of July, 1841, and so continued to hold the said office, and to discharge the duties thereof, until some time in the month of October, 1843, when he resigned the same.

Your memorialists further show that they, together with the said Josiah Barker, and the said John Davenport in his lifetime, became the securities of the said Thomas Gibbes Morgan, to the United States, for the faithful discharge of his said office.

That upon the resignation of the said Morgan, as aforesaid, and the final settlement of his accounts, a large balance was found to exist against him, in favor of the United States, and a suit was instituted against him and your memorialists, and his other securities, upon the bond executed by them as aforesaid, and a judgment rendered therein for the sum of *sixty thousand five hundred and sixty-nine dollars and fifty-seven cents*, with interest and costs; and the said Morgan being utterly insolvent and unable to pay any part of the said judgment, the whole burden thereof will fall upon your memorialists and his other securities.

Your memorialists further show that at the time the said Morgan was appointed to the said office, the law of Congress commonly called the sub-treasury law was in force, and the branch of the mint of the United States at the city of New Orleans was the place of deposit for all the

public moneys of the United States; that by the law and the instructions from the Treasury Department, then in force, the collector of the customs was directed to make daily deposits of all the public moneys received by him with the treasurer of the mint, and was thus relieved from all responsibility for the safekeeping thereof, and was not, and could not by law be considered as a disbursing officer of the government, or in any manner subjected to the heavy responsibility as such. But in the month of —, 1841, Congress passed a law by which the act commonly called the sub-treasury law was repealed, but no provision was made for the deposit or safekeeping of the public moneys. The receipt of the treasurer of the mint was no longer a lawful discharge to the collector of the customs. All the banks of the city of New Orleans were in a suspended and most precarious state, and were unsafe depositories. The custom-house was in a dilapidated and most insecure state, and its vaults totally unfit and unsafe for the reception and safekeeping of the public moneys. Under such circumstances, no alternative remained to the collector but to receive and keep the said moneys at his own risk and peril, and that of his securities, until Congress or the Treasury Department should provide for the same.

Your memorialists show that no provision was made by Congress, and none by the Treasury Department, until the 20th day of July, 1843, and that during the whole period from September, 1841 until July, 1843, all the public moneys collected at the port of New Orleans were so kept by the collector at his risk, and that the Treasury Department, in effect, made of him a sub-treasurer and disbursing officer during that period, by drawing treasury drafts on him, and disposing of all the public moneys at New Orleans by means of such drafts; thus imposing upon him not only the risk and peril of keeping and guarding the said moneys, but the burden of paying the said drafts, with all the additional risk, labor, and trouble resulting from such a state of things.

Your memorialists further show that the said collector, in the final accounts rendered by him to the Treasury Department, credited himself by a commission of two and one-half per cent. upon the amount of the drafts actually drawn upon him and paid by him during the period aforesaid, but the same was rejected by the accounting officer of the treasury.

That upon the trial of the suit aforesaid, the justice and legality of the same was again submitted to the court where the suit was tried; who, although the justice and equity of the compensation was admitted, felt bound by the strict letter of the law to reject the same, and a final judgment was entered up against your memorialists for the sum herein before stated. Your memorialists state that it was fully proved on the trial of the said cause that the commission so charged by the said collector was a moderate and just one, and hardly an adequate compensation for the great risk which he ran, the heavy responsibility which he incurred in case of loss or accident, and the still more onerous one imposed upon his sureties. The amount of the said commission, as charged in said accounts for the treasury drafts actually paid by the collector during the period aforesaid, was *twenty-eight thousand one hundred and sixty-nine dollars, (\$28,169)* which, if allowed, would have reduced the balance due the United States to the sum of *thirty-two thousand four hundred dollars and fifty-seven cents (\$32,400 57.)*

Your memorialists humbly represent that, under all the circumstances of

the case, the said collector was in equity and justice entitled to the said compensation; that from his total inability to pay any part of said judgment, the whole will fall as a total loss upon your memorialists, with the exception of *seventeen thousand dollars* (\$17,000) which the said Morgan has secured to your memorialists, and that they are entitled to avail themselves of any such equity to a greater extent than the collector himself.

They further state that at the time the said Morgan was appointed as aforesaid, the law having provided a place of deposit for the public moneys; and the collector being obliged by law to make his deposits of all moneys daily, or at very short periods, and to report the same to the Treasury Department, this state of things was a salutary check upon the officer, rendering defalcation more difficult and much less likely to occur; increased the confidence of those who were disposed to become bound for him, and was an inducement to them to do so. But the action of the legislature in repealing the law without providing another place of deposit, changed the nature of his functions, caused a great accumulation of moneys in his hands for an indefinite period of time, added greatly to his labors and duties, and his temptation and the facility of defalcation, and much to the danger and responsibility of your memorialists as his sureties—so much so, as perhaps in strict law to have entitled them to relief to the whole extent of their liability. But they have not made any such plea, and now rely upon the justice and equity of Congress to extend to them such partial relief as they believe they are clearly entitled to.

Your memorialists therefore pray that Congress will pass a law directing the said sum of twenty-eight thousand one hundred and sixty-nine dollars (\$28,169,) with interest thereon, to be credited upon the said judgment, or grant them such other relief as the wisdom and justice of Congress may seem meet.

THOMAS W. CHINN,
(by M. COURTNEY.)
M. COURTNEY

We the undersigned, the governor, the lieutenant governor, and the senators of the State of Louisiana, join in the prayer of the foregoing petition.

M. M. Reynolds,
Duncan F. Kenner,
Thomas A. Cooke,
Geo. W. Scranton,
L. J. Seyur,
S. Van Winkle,
Ben. Richardson,
Thos. C. Porter,
Manuel J. Garcia,
W. J. Parham,
C. L. Swayze,
Felix Garcia,
Charles F. Daunois,
Horatio Davis,

Isaac Johnson,
Trasimon Landry,
J. G. Bryce,
John Moore,
C. Adams, jr.,
Walter Brashear,
Geo. C. McWhorter,
John M. Bell,
Henry C. Thibodeaux,
J. K. Gaudet,
J. R. Caulfield,
Maunsel White,
F. M. Hereford,
A. D. M. Haralson.

The UNITED STATES

vs.

T. G. MORGAN,
M. COURTNEY,
T. W. CHINN,
J. DAVENPORT, &
JOSIAH BARKER.

In the circuit court of the United States, in and
for the fifth circuit and district of Louisiana.

The undersigned jurors, sworn and empannelled to try the above entitled cause, on the 31st day of March, in the year 1847, do certify: That from the evidence then produced before us, we considered the charge made by the said Morgan—for commissions for the safekeeping and disbursement of the amount of money paid by him on the drafts drawn on him by the Treasurer of the United States, between the date of the sub-treasury law and the time at which he was directed to deposite the public moneys in the Bank of Louisiana—to be equitable and just, and that the same was not more than a just, equitable remuneration for his services and responsibilities. In this opinion, formed from the evidence adduced before us, we were strengthened by the charge of the court, by which we were advised there was no legal objection to such compensation—a charge repeated several times by the court; and that eleven of our body were in favor of finding in conformity with such an opinion—founded on the equity of the compensation asked and the charge of the court—and that such verdict we believe would have been found, but that one of the jurors considered the charge of the court was not in conformity of the law.

A. B. BEIN, Foreman,
JOSEPH HARKER,
J. E. JOLLY,
E. A. TYLER,
J. O. HARRIS,
CHARLES DEAKE,
JOHN L. ADAMS,
GEO. W. GIVENS.

NEW ORLEANS, *March 16, 1848.*

NEW ORLEANS, *March 17, 1848.*

Considering all the circumstances of this case, as set forth in the annexed certificate of the members of the jury, and as more fully explained in the memorial of the Hon. T. W. Chinn and others, securities of Thomas Gibbes Morgan, late collector of this port, I am of opinion that the charge of $2\frac{1}{2}$ per cent. commission claimed on a certain amount of the receipts and disbursements, subsequent to the repeal of the sub-treasury, as just and correct, and that it ought to be allowed to the memorialists.

SAM. J. PETERS.

We concur in the above opinion.

R. J. WARD,
JAMES ROBB & Co.,
EDW. J. FORSTALL,

JAMES DICK,
HILL McLEAN & Co.,
WATT & DESAULES,
MAUNSEL WHITE & Co.,
KELLY & CONYNGHAM,
A. LEDOM & Co.,
J. B. BYRNE & Co.

The defendants, who are sureties in the case of the United States *vs.* T. G. Morgan and others, having signified their intention to apply to Congress for relief, the undersigned, who sat upon the trial of said case, hereby certify that in their opinion, under the peculiar circumstances of the case, the allowance of the commissions charged by Mr. Morgan would be a just and equitable measure of relief to said parties.

J. McKINLEY.
THEO. H. McCALEB,
U. S. District Judge for Louisiana.

NEW ORLEANS, *March* 11, 1848.

